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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TODD GREENBERG, On Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

v.

TARGET CORPORATION, a Minnesota
Corporation,

Defendant.

Case No.:

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*; and
2. VIOLATION OF THE CONSUMERS
LEGAL REMEDIES ACT, Civil Code
§1750 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Todd Greenberg brings this action on behalf of himself and all others similarly
2 situated against Defendant Target Corporation (“Target” or “Defendant”) and states:

3 NATURE OF ACTION

4 1. Defendant manufactures, markets, sells, and distributes biotin supplements under
5 the Up & Up brand. The products are: biotin 1000 mcg, biotin 5000 mcg, and biotin 10,000 mcg
6 (collectively, “Biotin Products”).¹ On the front of the Biotin Products, Defendant represents that
7 its Biotin Products “help[] support healthy hair and skin.” These representations are collectively
8 referred to as the “health benefit representations.” Defendant’s health benefit representations are
9 false, misleading and reasonably likely to deceive the public.

10 2. The sole active ingredient in Defendant’s Biotin Products is biotin. Biotin is a
11 colorless, water soluble B vitamin found in many foods, including several fruits and vegetables,
12 liver, salmon, cereals, and other foods. Biotin serves as a biochemical co-factor (a helper of
13 sorts) for certain enzymatic reactions and is involved in the metabolism of fats, carbohydrates,
14 and amino acids.

15 3. The human body only requires a finite amount of biotin on a daily basis for it to
16 perform its enzymatic functions as there are a finite number of enzymes that use biotin. Once
17 there is sufficient biotin in the body, saturation occurs and the body just does not use this surplus
18 biotin. The Institute of Medicine has set an adequate intake (AI) for biotin at 30 micrograms
19 (mcg) per day for people 19 years and older and even less for younger people. Dietary Reference
20 Intakes for Thiamin, Riboflavin, Niacin, Vitamin B6, Folate, Vitamin B12, Pantothenic Acid,
21 Biotin, and Choline (“IOM Dietary Reference Intakes”), INSTITUTE OF MEDICINE, at pp. 374, 382,
22 *available at* [http://www.nap.edu/catalog/6015/dietary-reference-intakes-for-thiamin-riboflavin-](http://www.nap.edu/catalog/6015/dietary-reference-intakes-for-thiamin-riboflavin-niacin-vitamin-b6-folate-vitamin-b12-pantothenic-acid-biotin-and-choline)
23 [niacin-vitamin-b6-folate-vitamin-b12-pantothenic-acid-biotin-and-choline](http://www.nap.edu/catalog/6015/dietary-reference-intakes-for-thiamin-riboflavin-niacin-vitamin-b6-folate-vitamin-b12-pantothenic-acid-biotin-and-choline). More than sufficient
24 biotin is derived from the daily diets of the general U.S. population as healthy persons ingest
25 anywhere from 30mcg-60mcg of biotin from their daily diets.

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¹ Plaintiff reserves the right to add additional products upon completion of discovery.
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1 4. While persons (1) with exceedingly rare conditions that cause biotin deficiencies,
2 or (2) who chronically ingest inordinant amounts of raw egg whites, can require biotin
3 supplementation, other than these few rare exceptions, healthy people already have more than
4 adequate, if not excessive, amounts of biotin derived from their diet. In fact, average biotin
5 intake among North American adults is anywhere from 35-70 mcg per day. Yet, the 1000 mcg
6 product is over 30 times more than the AI, the 5000 mcg product is over 150 times more than the
7 AI, and the 10,000 mcg product is over 300 times more than the AI. Thus, even though the IOM
8 has yet to set a DRI (daily recommended intake) for biotin, these mega-dose amounts are far
9 beyond any conceivable range that would ever be beneficial.

10 5. Biotin is a co-factor for five carboxylase enzymes. A co-factor is a molecule that
11 interacts with an enzyme to facilitate that enzyme's ability to carry out its biochemical functions.
12 Biotin attaches itself to these enzymes, thereby helping each of them perform their respective
13 functions. The body only needs a finite amount of biotin on a daily basis to perform these
14 functions. Thus, biotin is not a "more is better" substance, nor is more biotin needed from
15 supplementation to complete these daily enzymatic functions. In short, once one consumes a
16 sufficient amount of biotin, which is easily met by the general population in their everyday diets,
17 the remainder becomes functionally superfluous and does not convey any additional health
18 benefits.

19 6. Therefore, with the exception of the two exceedingly rare conditions discussed
20 above, for the general population the biotin supplements sold by Defendant are unneeded,
21 superfluous and will not provide any benefits, let alone support healthy hair and skin. That is
22 because the general population already consumes sufficient, if not excessive, amounts of biotin
23 from their daily diets.

24 7. The only apparent scientific support for biotin supplements affecting hair or skin is
25 from studies of people with what is called "frank" deficiency – e.g., those with rare biotin
26 deficiency conditions. Such persons, as a result of their conditions, experience a variety of
27 symptoms including hair loss along with skin problems. Some studies have shown that in
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1 persons with these very rare conditions, biotin supplementation can improve hair/skin health. But
2 these are persons who already have serious and rare conditions and, most important, the results of
3 these few studies cannot be extrapolated to healthy persons in the general population, as persons
4 in the general population are not biotin deficient and, as noted above, already consume sufficient
5 biotin in their daily diets. Defendant also cannot represent that its Biotin Products help treat or
6 cure the symptoms of these diseases, as FDA law precludes manufacturers of dietary supplements
7 from representing that their dietary supplements treat or cure diseases.

8 8. In this regard, the 2000 Institute of Medicine Report from the National Academy
9 of Sciences on *Dietary Reference Intakes for Thiamin, Riboflavin, Niacin, Vitamin B6, Folate,*
10 *Vitamin B12, Pantothenic Acid, Biotin, and Choline* states that, “No definitive studies
11 demonstrate evidence of biotin deficiency in normal individuals in any group resulting from
12 inadequate intakes.” IOM Dietary Reference Intakes at p. 381. Thus, the IOM concluded in 2000,
13 and this conclusion remains true today, that while there was a limited amount of information
14 regarding biotin intakes this information indicates that “[T]here is little cause for concern about
15 the adequacy of biotin intake for healthy people...” *Id.* at pp. 385-86. Since there is little concern
16 for the adequacy of biotin intake for healthy people (e.g., people who do not have one of the rare
17 biotin deficiencies described above) and since the need for biotin is finite, Defendant’s Biotin
18 Products are superfluous, unneeded and certainly do not support the health of hair and skin as
19 represented.

20 9. As a result of the foregoing, the mega-dose Biotin Products to be taken in daily
21 doses ranging from 1000 mcg to 10,000 mcg as sold by Defendant are superfluous and unneeded
22 and they will not and do not provide any benefits at all, let alone support healthy hair, skin and
23 nails.

24 10. Thus, Defendant’s health benefit representations are false, misleading and
25 reasonably likely to deceive consumers. As a result, consumers – including Plaintiff and members
26 of the proposed Classes – have purchased Biotin Products that do not perform as advertised.

27 11. Plaintiff brings this action on behalf of himself and other similarly situated
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1 consumers who purchased the Biotin Products to halt the dissemination of this false, misleading,
2 and deceptive advertising message, correct the false and misleading perception it has created in
3 the minds of consumers, and obtain redress for those who have purchased the Biotin Products.
4 Based on violations of California unfair competition laws (detailed below), Plaintiff seeks
5 injunctive and restitutionary relief for consumers who purchased the Biotin Products.

6 **JURISDICTION AND VENUE**

7 12. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter
8 in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a
9 class action in which there are in excess of 100 class members and some members of the Class
10 are citizens of a state different from Defendant.

11 13. This Court has personal jurisdiction over Defendant because Defendant is
12 authorized to conduct and does conduct business in California, including this District. Defendant
13 marketed, promoted, distributed, and sold the Biotin Products in California, and Defendant has
14 sufficient minimum contacts with this State and/or sufficiently availed itself of the markets in this
15 State through its promotion, sales, distribution, and marketing within this State, including this
16 District, to render the exercise of jurisdiction by this Court permissible.

17 14. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b) because a
18 substantial part of the events giving rise to Plaintiff's claims occurred while he resided in this
19 judicial district. Venue is also proper under 18 U.S.C. §1965(a) because Defendant transacts
20 substantial business in this District.

21 **PARTIES**

22 15. During the relevant time period, Plaintiff Todd Greenberg resided in Mill Valley,
23 California. On or around May 5, 2015, Plaintiff Greenberg was exposed to, saw and relied upon
24 Defendant's health benefit representations by reading the Up & Up biotin 5000 mcg label. He
25 purchased a bottle of the biotin 5000 mcg product at a Target in Novato, California in reliance on
26 Defendant's health benefit representations. He paid approximately \$8 for the Product. The
27 Biotin Product Plaintiff Greenberg purchased did not and could not provide the represented health
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1 benefits. Had Plaintiff Greenberg known the truth about Defendant's misrepresentations, he
2 would not have purchased the Biotin Product. As a result, Plaintiff Greenberg suffered injury in
3 fact and lost money at the time of purchase.

4 16. Defendant Target Corporation is incorporated under the laws of the state of
5 Minnesota. Defendant's corporate headquarters is located at 1000 Nicollet Mall, Minneapolis,
6 Minnesota 55403. Defendant Target markets and sells the Up & Up Biotin Products to tens of
7 thousands of consumers in California and throughout the United States.

8 **FACTUAL ALLEGATIONS**

9 ***The Biotin Products***

10 17. Defendant manufactures, distributes, markets, and sells over-the-counter Biotin
11 products under its Up & Up brand. This lawsuit concerns three of those products — biotin 1000
12 mcg, biotin 5000 mcg, and biotin 10,000 mcg (collectively, "Biotin Products"). The Biotin
13 Products are marketed as supplements with the purpose of providing certain health benefits. The
14 Biotin Products are sold in Target stores across in the country, including in California. A single
15 container of the Biotin Products retails for approximately \$6-\$12.

16 ***The Uniform Health Benefits Message***

17 18. Throughout the relevant time period, Defendant has consistently conveyed the
18 health benefits message to consumers throughout California and the United States.

19 ***Consumer Exposure to the Health Benefits Message***

20 19. Each and every consumer who purchases the Biotin Products is exposed to the
21 deceptive health benefit representations, which appear prominently and conspicuously on the
22 front of each Biotin Product as shown below:
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Copies of representative labels are attached hereto as Exhibit A.

The Impact of Defendant's Wrongful Conduct

20. Plaintiff and Class members have been and will continue to be deceived or misled by Defendant's deceptive health benefit representations. Plaintiff and the Class members have been damaged in their purchases of the Biotin Products and have been deceived into purchasing the Biotin Products that they believed, based on Defendant's representations, would provide them health benefits, when, in fact, they do not.

CLASS DEFINITION AND ALLEGATIONS

21. Plaintiff brings this action on behalf of himself and all other similarly situated consumers pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

Multi-State Class Action

All consumers who, within the applicable statute of limitations period until the date notice is disseminated, purchased Biotin Products

1 in California, Illinois, Massachusetts, Michigan, Minnesota, Missouri,
2 New Jersey, New York, and Washington.

3 Excluded from this Class are Defendant and its officers,
4 directors, employees and those who purchased Biotin Products
for the purpose of resale.

5 22. In the alternative, Plaintiff seeks certification of the following Class:

6 **California-Only Class Action**

7 All California consumers who within the applicable statute of
8 limitations period until the date notice is disseminated, purchased
Biotin Products.

9 Excluded from this Class are Defendant and its officers, directors
and employees, and those who purchased Biotin Products for the
10 purpose of resale.

11 23. **Numerosity.** The members of the Classes are so numerous that joinder of all
12 members of the Classes is impracticable. Plaintiff is informed and believes that the proposed
13 Classes contain thousands of purchasers of Biotin Products who have been damaged by
14 Defendant's conduct as alleged herein. The precise number of Class members is unknown to
Plaintiff.

15 24. **Existence and Predominance of Common Questions of Law and Fact.** This
16 action involves common questions of law and fact, which predominate over any questions
17 affecting individual Class members. These common legal and factual questions include, but
18 are not limited to, the following:

- 19 (a) whether Defendant's health benefit representations discussed above are
20 misleading, or objectively reasonably likely to deceive;
- 21 (b) whether Defendant's alleged conduct is unlawful;
- 22 (c) whether the alleged conduct constitutes violations of the laws asserted;
- 23 (d) whether Defendant engaged in false or misleading advertising; and
- 24 (e) whether Plaintiff and Class members are entitled to appropriate remedies,
25 including restitution, corrective advertising, and injunctive relief.

26 25. **Typicality.** Plaintiff's claims are typical of the claims of the members of the
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1 Classes because, *inter alia*, all Class members were injured through the uniform misconduct
2 described above and were subject to Defendant's deceptive health benefit representations on the
3 front of each and every Biotin Product container. Plaintiff is also advancing the same claims and
4 legal theories on behalf of himself and all members of the Classes.

5 26. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
6 interests of the members of the Classes. Plaintiff has retained counsel experienced in complex
7 consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff
8 has no adverse or antagonistic interests to those of the Classes.

9 27. **Superiority.** A class action is superior to all other available means for the fair and
10 efficient adjudication of this controversy. The damages or other financial detriment suffered by
11 individual Class members is relatively small compared to the burden and expense that would be
12 entailed by individual litigation of their claims against Defendant. It would thus be virtually
13 impossible for members of the Classes, on an individual basis, to obtain effective redress for the
14 wrongs done to them. Furthermore, even if Class members could afford such individualized
15 litigation, the court system could not. Individualized litigation would create the danger of
16 inconsistent or contradictory judgments arising from the same set of facts. Individualized
17 litigation would also increase the delay and expense to all parties and the court system from the
18 issues raised by this action. By contrast, the class action device provides the benefits of
19 adjudication of these issues in a single proceeding, economies of scale, and comprehensive
20 supervision by a single court, and presents no unusual management difficulties under the
21 circumstances here.

22 28. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf
23 of the entire Classes, on grounds generally applicable to the entire Classes, to enjoin and prevent
24 Defendant from engaging in the acts described, and requiring Defendant to provide full restitution
25 to Plaintiff and Class members.

26 29. Unless a Class is certified, Defendant will retain monies received as a result of its
27 conduct that were taken from Plaintiff and Class members.

COUNT I
Violation of Business & Professions Code §17200, *et seq.*
Fraudulent Business Acts and Practices
(On Behalf of the Multi-State or California-Only Class)

Violation of Business & Professions Code §17200, *et seq.*
Fraudulent Business Acts and Practices
(On Behalf of the Multi-State or California-Only Class)

32. Plaintiff brings this claim individually and on behalf of the Classes.

34. Plaintiff suffered that injury at the time of his purchase, when he bought a product that does not deliver the benefits Defendant promises.

36. In the course of conducting business, Defendant committed “fraudulent business act[s] or practices” and false, deceptive or misleading advertising by, *inter alia*, making the health benefit representations (which also constitutes advertising within the meaning of §17200) regarding the Biotin Products on the Biotin Products’ labeling, as set forth more fully herein.

38. Plaintiff and other members of the Classes have in fact been deceived as a result of their reliance on Defendant's material health benefit representations. Plaintiff and the other Class members have suffered injury in fact and lost money as a result of their purchase(s) of

1 Defendant's Biotin Products that do not provide health benefits.

2 39. Unless restrained and enjoined, Defendant will continue to engage in the above
3 described conduct. Accordingly, injunctive relief is appropriate.

4 40. Plaintiff, on behalf of himself, all others similarly situated, and the general public,
5 seeks restitution of all money obtained from Plaintiff and the members of the Classes collected as
6 a result of unfair competition, an injunction prohibiting Defendant from continuing such
7 practices, corrective advertising, and all other relief this Court deems appropriate, consistent with
8 Business & Professions Code §17203.

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10 **COUNT II**
Violations of the Consumers Legal Remedies Act – Civil Code §1750 *et seq.*
(On Behalf of the California-Only Class)

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12 41. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above,
13 as if fully set forth herein.

14 42. Plaintiff brings this claim individually and on behalf of the California-Only Class.

15 43. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
16 California Civil Code §1750, *et seq.* (the "Act").

17 44. Plaintiff is a consumer as defined by California Civil Code §1761(d). The Biotin
18 Products are "goods" within the meaning of the Act.

19 45. Defendant violated and continues to violate the Act by engaging in the following
20 practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the
21 California-Only Class which were intended to result in, and did result in, the sale of the Biotin
22 Products:

23 (5) Representing that [the Biotin Products have] . . . characteristics, . . . uses [and]
24 benefits . . . which [they do] not have

25 * * *

26 46. Pursuant to California Civil Code §1782(d), Plaintiff and the California-Only
27 Class seek a Court order enjoining the above described wrongful acts and practices of Defendant

1 and for restitution and disgorgement.

2 47. Pursuant to §1782 of the Act, Plaintiff notified Defendant in writing by certified
3 mail of the particular violations of §1770 of the Act and demanded that Defendant rectify the
4 problems associated with the actions detailed above and give notice to all affected consumers of
5 Defendant's intent to so act. A copy of the letter is attached hereto as Exhibit B.

6 48. If Defendant fails to rectify or agree to rectify the problems associated with the
7 actions detailed above and give notice to all affected consumers within 30 days of the date of
8 written notice pursuant to §1782 of the Act, Plaintiff will amend this Complaint to add claims for
9 actual, punitive and statutory damages, as appropriate.

10 49. Defendant's conduct is fraudulent, wanton and malicious.

11 50. Pursuant to §1780(d) of the Act, attached hereto as Exhibit C is the affidavit
12 showing that this action has been commenced in the proper forum.

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff prays for a judgment:

15 A. Certifying the Classes as requested herein;

16 B. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff and
17 the proposed Class members;

18 C. Awarding injunctive relief as permitted by law or equity, including: enjoining
19 Defendant from continuing the unlawful practices as set forth herein;

20 D. Ordering Defendant to engage in a corrective advertising campaign;

21 E. Awarding attorneys' fees and costs; and

22 F. Providing such further relief as may be just and proper.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

25 ///

26 ///

1 Dated: April 4, 2017

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

3 /s/Patricia N. Syverson

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic mail notice list

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 4, 2017.

/s/Patricia N. Syverson

Patricia N. Syverson (203111)

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